Oh. St. 316, 52 N. E. 834. See 3 COOK, CORPORATIONS, 7 ed., § 663. It is submitted that justice can be done in the principal case without doing violence to so fundamental a conception of the law of corporations. It would have been more logical to have attached the shares owned by the defendant debtor, and in that way to have secured control of the corporation and its assets, including the particular debt in question. Such a procedure would have had the added advantage of being fair to any possible creditors of the corporation, whose interests are entirely disregarded by the mode of procedure actually sanctioned. If the incorporator is thereby enabled to prefer the creditors of his corporation, as against his personal creditors, it is simply the logical working out of an incorporation law which enables the individual to secure the advantages of corporate organization.

CORPORATIONS — STOCKHOLDERS — INDIVIDUAL LIABILITY TO CORPORATION AND CREDITORS — EFFECT OF FAILURE TO PAY STATUTORY PERCENTUM OF SUBSCRIPTION. — The defendant subscribed for one hundred shares of the stock of a corporation without complying with the statutory provision that "10% upon the amount subscribed" should be paid to the directors. N. Y. CONSOL. LAWS, ch. 59, § 53. The defendant thereafter acted as a director of the corporation and received dividends for a period of years. The corporation became bankrupt; and the trustee seeks to recover the amount unpaid on defendant's stock. *Held*, that the trustee may recover. *Jeffery* v. *Selwyn*, 115 N. E. 275 (N. Y.).

The statute involved is a common one and has been often interpreted, but no trace of uniformity is discernible in the decisions. See 1 COOK, CORPORATIONS, 7 ed., §§ 172–175. The easy holding is that a failure to pay the required ten percentum renders the subscription void. *Van Schaick* v. *Mackin*, 129 App. Div. 335, 113 N. Y. Supp. 408. The result, however, is very unsatisfactory when the corporation is in the hands of a representative of the creditors. The opposite extreme is reached by the cases holding that the corporation may enforce the subscription even when the rights of creditors are in no way involved. *Pittsburg, etc. R. Co.* v. *Applegate*, 21 W. Va. 172. The objection to such interpretation is that little effect is thereby given to the statute. A middle ground may be supported. The purpose of the statute was obviously to benefit creditors by assuring them of tangible assets and *bona fide* stockholders. 1 MORAWETZ, CORPORATIONS, 2 ed., § 72. The desired pressure on the stockholder to pay and the corporation to require payment can be reached in the absence of creditor's claims by refusing to allow a recovery by either party against the other when the ten percentum has not been paid. There is no hardship because the parties are *in pari delictu*. This result has been reached in New York. *N. Y., etc. R. Co.* v. *Van Horn*, 57 N. Y. 473. When the corporation is in the hands of a representative of the creditors, however, to allow, as the principal case does allow, recovery by the representative furthers rather than defeats the legislative purpose.

CORPORATIONS — STOCKHOLDERS — RIGHTS INCIDENT TO MEMBERSHIP — RIGHT TO HAVE A FAIR ELECTION OF OFFICERS. — The minority shareholders in a corporation succeeded in electing their candidate by voting through proxies. It had been an unbroken custom to cast votes personally. *Held*, that a new election must be ordered. *In re Real Estate Owners, etc. Ass'n*, 56 N. Y. L. J. 2004 (N. Y. Sup. Ct., Spec. Term).

There is no inherent right in a member of a corporation to cast his vote by proxy. *Commonwealth* v. *Bringhurst*, 103 Pa. 134. See *Phillips* v. *Wickhan*, 1 Paige (N. Y.) 590, 598; 1 MORAWETZ, CORPORATIONS, 2 ed., § 486. However, this privilege may be conferred by the articles of incorporation or even the by-laws. *People* v. *Crossly*, 69 Ill. 195; *Market St. Ry. Co.* v. *Hellman*, 109 Cal.

571, 42 Pac. 225. See 2 COOK, CORPORATIONS, 7 ed., § 610. And in New York this right is granted by statute. N. Y. CONSOL. LAWS, 1991. Hence, if the court has power to invalidate the election in the principal case, it is not because of anything improper in the mere casting of the votes by proxy. But, if for any reason the shareholders have not had a fair opportunity to vote in a regularly conducted meeting, the election may be set aside. *In Re Argus Printing Co.*, 1 N. D. 434, 48 N. W. 347; *In Re Townsend*, 24 Misc. 80, 53 N. Y. Supp. 289. Similarly, where, as in the principal case, there is a fraud and surprise on the majority shareholders, another election may be ordered. *People* v. *Albany, etc. R. Co.*, 55 Barb. (N. Y.) 344. In the absence of statute, *quo warranto* is the proper proceeding to try title to a corporate office; and in the ordinary case equity will not interfere. See *People* v. *Albany, etc. R., supra; Mozley* v. *Alston*, 16 L. J. Eq. (N. S.) 217. But, if the election is fraudulently conducted, equity will sometimes take jurisdiction to prevent irreparable injury. *Johnston* v. *Jones*, 23 N. J. Eq. 216. But see *Hartt* v. *Harvey*, 32 Barb. (N. Y.) 55. However, the remedy in this type of cases is largely statutory. See 2 COOK, CORPORATIONS, 7 ed., § 619. The New York statute is fairly typical. It provides that the Supreme Court shall exercise general supervision over corporate elections and afford any relief the occasion demands. N. Y. CONSOL. LAWS, 1994.

EMINENT DOMAIN — WHEN PROPERTY IS TAKEN — DAMAGE TO LAND ON STREAMS TRIBUTARY TO STREAMS IMPROVED. — The government erected a lock and dam in the Cumberland River, which caused the plaintiff's land, which is situated on an unnavigable tributary of the Cumberland River, to be frequently overflowed. *Held*, that the plaintiff is entitled to compensation. *United States* v. *Cress*, U. S. Sup. Ct., Oct. Term, 1916, No. 84.

In another case, the facts were similar to those in *United States* v. *Cress*, except that instead of flooding the plaintiff's land, the water was backed up upon a mill dam, so that there was not enough fall to turn the mill wheel. *Held*, that the plaintiff is entitled to compensation. *United States* v. *Kelly*, U. S. Sup. Ct., Oct. Term, 1916, No. 718.

The federal government has power to control navigable streams so far as may be necessary in regulating commerce among the states and with foreign nations. CONSTITUTION, Art. 1, § 8. See *Scott* v. *Lattig*, 227 U. S. 229, 243; *Gibson* v. *United States*, 166 U. S. 269, 272. But this power is limited by the Fifth Amendment which prohibits the taking of private property for public use without just compensation. See *Monongahela Navigation Co.* v. *United States*, 148 U. S. 312, 336. For a taking there must be an appropriation of an interest in the land itself as contrasted with mere consequential damage such as an interference with access to a stream. *Gibson* v. *United States, supra; Scranton* v. *Wheeler*, 179 U. S. 141. See 14 HARV. L. REV. 451. If the land is permanently flooded, it is a taking of the fee simple. *Pumpelly* v. *Green Bay Co.*, 13 Wall. (U. S.) 166; *United States* v. *Lynah*, 188 U. S. 445. See LEWIS, EMINENT DOMAIN, 3 ed., § 80. If the flooding is only occasional, a lesser interest analogous to an easement is taken. *McKenzie* v. *Mississippi, etc. Boom Co.*, 29 Minn. 288. It is also a taking when the improvements interfere with the use of a mill. *Gibson* v. *Fischer*, 68 Iowa, 29, 25 N. W. 914; *Barclay R. & Coal Co.* v. *Ingham*, 36 Pa. St. 194. It would seem that the rights of riparian owners along unnavigable tributaries are as great as the rights of owners of land along the stream improved.

EVIDENCE — DOCUMENTS — CARBON COPIES AS DUPLICATE ORIGINALS. — Plaintiff offered in evidence a carbon copy of a typewritten letter which he had sent to the defendant. No notice to produce the original had been given. *Held*, that the carbon copy is admissible. *Edmunds* v. *Atchison, etc. Ry. Co.*, 162 Pac. 1038 (Cal.).